

Secretary Marlene H. Dortch, The following comments are submitted on behalf of the Maryland Association of Nonprofit Organizations.

The Maryland Association of Nonprofit Organizations is a statewide organization comprised of over 1400 member nonprofit agencies, associations and institutions, and our purpose is to support and enhance the effectiveness of Maryland's more than 21,000 nonprofit groups in carrying out their missions of public and community service. We do this by providing training and technical assistance on all areas of nonprofit organization and management, offering cooperative buying programs for products and services, representing the interests of nonprofit organizations on issues of public policy, promulgating Standards of Excellence - an ethics and accountability code as a guide to effective and accountable management of organizations, and conducting research about the nonprofit sector and information activities to educate the public about the nature and mission of nonprofit organizations.

The Maryland Association of Nonprofit Organizations specifically requests that the Commission reconsider and amend its Report and Order, adopted June 26, 2003, and published in the Federal Register July 25, 2003, in so far as it applies to the use of fax communications by nonprofit organizations in carrying out their tax exempt missions, and we endorse the similar requests being submitted by other organizations. Further, in the absence of such reconsideration, we request that the application of the Report and Order be clarified with respect to specific situations in order to reduce the additional cost and administrative burden which it will place on these organizations' efforts to achieve their recognized tax exempt purposes in the public interest.

Request for Reconsideration

The relationship of for-profit businesses, attempting to sell or promote commercial products and services in the competitive marketplace, to anyone with whom they have had any form of prior dealing or contact (and the attendant potential for abusive practices), is simply not the same as that of a nonprofit organization to its volunteers, dues-paying members, or those individuals or groups it has been created to serve in the public interest.

Individuals and organizations voluntarily associate themselves with nonprofit charitable, educational or support organizations, or in many cases actively pay dues to be members of such organizations, to be aware of its programs and activities, and to support or make direct use of its services. In these circumstances, when they have provided contact information in order to be kept informed about those services and activities, and they do not ask that the provision of this information in a particular form be discontinued, it appears both arbitrary and unreasonable, and would create undue burden and expense, to construe this information as "unsolicited advertisement" and require the organization to secure and maintain further written consent before providing the information.

Further, it clearly burdens or thwarts the accomplishment of the recognized public purpose for which such an organization has been granted tax exempt status, to require that before advising a potential client, patron or program participant of the availability of its services, or before

providing information about services in response to a verbal inquiry or request, the organization must obtain in advance and maintain written permission.

For these reasons, recognizing the Commission's action of August 18, 2003 delaying the effective date of the 'written consent' requirement, we ask that as soon as possible (and certainly before January 1, 2005) the Report and Order published by the Commission on July 25, 2003 be reconsidered and amended to exempt fax communications of tax exempt nonprofit organizations to their volunteers, members or otherwise in fulfillment of their recognized tax exempt purposes.

Request for Clarification

Several types of common fax communications by nonprofits to their members, clients, constituents or others do not serve a "commercial purpose" in the common understanding of that phrase, but the status of these communications is not clear under July 25 Report and Order. In the absence of a reconsideration as requested above, it is important that the meaning and application of the Order be clarified to prevent further and unnecessary burden on the efforts of nonprofit organizations to perform their tax-exempt, public interest missions. The following situations occur commonly, and members of our association, or our own staff, have raised these questions.

(I) Nonprofit associations often offer free seminars or informational programs to their members or other constituents. Are announcements or offers of such programs, when offered and conducted in furtherance of an organization's nonprofit purposes, considered to be per se "unsolicited advertisements" restricted by the Order? Assuming they are not, but if (as is often the case) the nonprofit hosting or conducting the program has other materials at the program location that may promote membership or other 'for fee' services, would these or comparable circumstances "taint" the initial announcement of the free program?

(II) Are press releases about potentially newsworthy organization activities, faxed to media contacts or others for the purpose of publication or re-publication, brought within the scope of "unsolicited advertisements" if in whole or in part the event or activity announced involves a program, service or product for which a fee is charged?

(III) Annual meetings of association membership are often a requirement of state law. Does a faxed notice of a legally required meeting constitute an "advertisement" if there is registration fee (or luncheon fee) for the event at which the annual meeting is held? (These meetings are often conducted as part of the program at an organization's annual conference, which may include one or more full days of activities.)

(IV) The language of the "existing business relationship" definition in Paragraph 113 of the July 3 Order refers to a residential subscriber's relation with a commercial entity. One of the tax exempt purposes of many nonprofits is to provide information or technical assistance to the public, usually without charge. Does a contact, initiated by a member of the public or another organization, seeking information or assistance from a nonprofit organization, give rise to a 'business relationship' when the provision of such information or assistance is a regular function of the nonprofit organization, and the information or assistance is provided

without charge? Assuming that it does, in the terms of the discussion in Paragraph 113, does this constitute a "transaction", or merely an "inquiry"?

(V) We believe it should be clear that the mere solicitation of a contribution to tax exempt nonprofit organization is not an "advertisement". Is this correct? Further, assuming a simple request for a contribution is not an 'advertisement', can any guidance be provided regarding the point at which a request for a contribution becomes an "advertisement" by virtue of the request including an "offer" or other mention of an item or service that will be provided in return for the contribution? The issue is significant because often the item or service 'offered' in return for a contribution is of symbolic or nominal value only, and the communication is clearly not an offer or promotion for a commercial sale of the item or service.

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